IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.8.2007

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THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition Nos.27236 and 27237 of 2007

Ferrari Shoes (India) Pvt. Ltd.,
represented by its Director
Mustafa Yasin N.P.,
112/113, Sidco Industrial Estate,
Malumichampatty (P.O),
Coimbatore - 641 021 .. Petitioner in both the Writ petitions

vs.

The Deputy Commercial Tax Officer,
Podanur Circle,
Coimbatore .. Respondent in both the Writ petitions

W.P.No.27236 of 2007:

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus to call for the records on the files of the respondent herein in his CST.287377/06-07, dated 26.7.2007, and to quash the same with a direction to adjudicate the assessment for the year CST.2006-07 in accordance with the provisions of The Tamil Nadu General Sales Tax Act, 1959, read with Section 9(2) of the Central Sales Tax Act, 1956.

W.P.No.27237 of 2007:

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus to call for the records on the files of the respondent herein in his CST.287377/07-08, dated 26.7.2007, and to quash the same with a direction to adjudicate the assessment for the year CST.2007-08 in accordance with the provisions of the Tamil Nadu General Sales Tax Act, 1959, read with Section 9(2) of the Central Sales Tax Act, 1956.

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For petitioner : Mr.N.Inbarajan

For Respondent : Mr.Haja Nazirudeen
Special Government Pleader (Tax)

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C O M M O N O R D E R

Mr.Haja Nazirudeen, the learned Special Government Pleader (Tax) takes notice for the respondent in both the writ petitions.

2. With the consent of the learned counsels appearing on either side, these writ petitions are taken up for final disposal.

3. It is stated that the petitioners are registered under the Companies Act, having their registered office at 112/113, SIDCO Industrial Estate, Coimbatore. The petitioners are registered dealers under The Tamil Nadu General Sales Tax Act, 1959, and The Central Sales Tax Act, 1956. They are also registered as a small scale industry, recognised by the Department of Industries, Government of Tamil Nadu. The petitioners are making footwear costing below Rs.100/- and are effecting both local as well as interstate sales. Sale of such footwear is exempted from payment of tax as it is an item falling under Sl.No.25 of part B of the third schedule of The Tamil Nadu General Sales Tax Act, 1959.

4. The petitioners have filed their monthly returns disclosing the turn over by way of sales of footwears and had also claimed exemption from tax. In the Assessment Year 2005-2006 an assessment order was issued by the respondent in TNGST.No.1802915/2005-06, dated 19.01.2007, in which, the sales of footwears below the cost of Rs.100/- was granted exemption. The respondent had also passed assessment order in respect of interstate sales turnover in its proceedings CST.287377/2005-06, dated 12.03.2007, granting tax exemption to interstate sales. While so, a notice, dated 11.06.2007, was issued, in which, it was stated that the exemption is available only if `C' forms were produced for the interstate sales. Thereafter, the petitioners had filed `C' forms which were accepted by the respondent granting the tax exemption. However, a notice in CST.287377/2005-06, dated 26.07.2007, was issued by the respondent, in which, it was stated that the exemption for the sales of footwear with MRP value of less than Rs.200/- is available as per Item 25 of Part B of Third Schedule, under The Tamil Nadu General Sales Tax Act, 1959, and Item No.30 of Fourth Schedule, under The Tamil Nadu Value Added Tax AcT, 2006. Since, it was a conditional exemption and not a general exemption, the said exemption was not available under Section 8(2) Explanation to the Central Sales Tax Act, 1956. Hence, an interstate sales of footwear effected by the petitioners from 01.04.2006 to 31.03.2007 are liable to tax at 4%, if covered by `C' Form and at 10.05% upto 31.12.2006, if not covered by `C' Form and tax at 12.5% from 01.01.2007 to 31.03.2007, if not covered by `C' Form.

5. As per the notice, dated 26.03.2007, the respondent directed the petitioners to pay the Central Sales Tax dues on the interstate sales of footwear, from 01.04.2006 to 31.03.2007, stating that further action would be taken against the petitioners as per the provisions of the Act,

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if they failed to pay the tax as stated. A tax demand was made for Rs.20,44,722/-. Similarly, a notice was issued in CST.No.287377/2007-08, dated 26.07.2007, for a sum of Rs.5,41,507/- for the interstate sales from 01.04.2007 to 30.06.2007. The petitioners had submitted that no notice was issued prior to the demand raised on 26.07.2007 and a mere reference was made to a clarification issued by the Commissioner of Commercial Taxes, Chepauk, Chennai, dated 30.04.2007, for the said notice dated 26.07.2007. In such circumstances, the writ petitions have been filed.

6. The main contention of the learned counsel appearing for the petitioners is that sufficient opportunity was not given to the petitioners before the impugned orders were passed.

7. The learned Special Government Pleader (Tax), appearing for the respondent, has submitted that the petitioner Company may be given an opportunity to make their representations before the respondent, within a period of 30 days from today. It is also submitted that no action would be taken against the petitioner Company till the final orders are passed by the respondent pursuant to such representations.

8. Based on the said submissions made by the learned Special Government Pleader (Tax), appearing for the respondent, the petitioners are permitted to make their representations to the respondent, within a period of 30 days from today, to enable the respondent to pass appropriate orders, on merits and in accordance with law, within a reasonable time thereafter. With the above directions, these writ petitions are disposed of. No costs. Consequently, connected M.P.Nos.1 of 2007 are closed.

csh.lan

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
The Assistant Commissioner (Excise)
Cuddalore,Cuddalore District

+1 cc to Government pleader Sr.No.51276.

+2 ccs to Mr.N.Inbarajan, Advocate Sr.No.51049.

SSK(CO)
dcp/30.8

W.P.Nos.27236 and 27237 of 2005

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